



(4310-4J-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Bishop Paiute Tribe – Liquor Control Ordinance No. 2012-07

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance No. 2012-07 of the Bishop Paiute Tribe. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Indian Country of the Bishop Paiute Tribe. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Bishop Paiute Tribe. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their jurisdiction, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825, Phone: (916) 978-6067; Fax: (916) 916-6099; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, DC 20240; Telephone (202) 513-7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Bishop Tribal Council adopted this Ordinance by Resolution T2012-46 on October 29, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Bishop Tribal Council duly adopted Liquor Control Ordinance No. 2012-07 by Resolution T2012-46 on October 29, 2012.

Dated: February 28, 2013

Kevin K. Washburn
Assistant Secretary – Indian Affairs.

The Bishop Paiute Tribal Liquor Control Ordinance No. 2012-07 shall read as follows:

Preamble

The Bishop Paiute Tribe (Tribe), aka the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony (Tribe), a federally recognized Indian Tribe located on the Bishop Paiute Reservation, established under Act of Congress of April 20, 1937 (50 Statutes 70), in Inyo County, California, with inherent sovereignty and a government to government relationship with the United States of America, has all the rights accorded to federally recognized tribes, with the Bishop Paiute Tribal Council recognized as the duly elected governing body of the Tribe.

This Ordinance is hereby enacted by the Bishop Tribal Council (Tribal Council) in exercising its inherent legal authority as the governing body of the Bishop Paiute Tribe.

Additional authority for the adoption of this ordinance is found in Federal Law at 18 USC 1161, providing in part that the Indian Liquor Laws found in the United States Code, shall not apply to any act or transaction with any area of Indian Country, provided such act or transaction is in conformity with both the laws of the state in which such act or transaction occurs, and with the laws duly adopted by the Tribe having jurisdiction over such areas of Indian Country.

Section 1.00 Declaration of Purpose

The purpose of this Ordinance is to regulate the sale, possession and use of alcoholic liquor on the Bishop Paiute Reservation and other lands subject to Tribal jurisdiction with the exception of Blocks thirty seven (37) and thirty eight (38) which are addressed by General Council Ordinance adopted on August 22, 1961. This Ordinance (2012-07) does not change or affect any provisions of the General Council Ordinance relating to Blocks thirty seven (37) and thirty eight (38).

Section 2.00 Definitions

In construing the provisions of this Ordinance, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

01. “Licensed Premises” means any Tribally authorized establishment at which liquor is sold and, for the purpose of this Ordinance, includes stores only a portion of which are devoted to sale of liquor or beer, any bar, or any public place designated by the Tribes as a licensed establishment for the sale of liquor/alcohol beverages under this ordinance.

.02 “Liquor/Alcohol Beverage” includes all alcohol, spirits, wine, beer, and any liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances. Alcohol and liquor are interchangeable in this ordinance.

.03 “Tribal Council” means the Bishop Tribal Council, the duly elected governing body of the Tribe.

.04 “Tribal Land” means all lands within the exterior boundaries of the Bishop Paiute Reservation and such other lands as may hereafter be acquired by the Tribe, whether within or without the present exterior boundaries, under any grant, transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

.05 “Tribal Court” means the Bishop Paiute Tribal Court.

Section 3.00 – Manufacture, Possession and Sales of Liquor/Alcohol

.01 Sales of Liquor/Alcohol – The sale of alcoholic beverages by business enterprises owned by and/or subject to the control of the Tribe under this ordinance shall be lawful within the exterior boundaries of the Bishop Paiute Reservation, provided such sales are in conformity with the laws of the State of California governing the sale of alcoholic beverages and this ordinance.

.02 Sales for Cash – All liquor/alcohol sales on Tribal Land shall be on a cash-only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards such as, but not limited to Visa or American Express.

.03 Sales for Personnel Consumption – All liquor/alcohol sales shall be for the personal use and consumption of the purchaser. Resale of any liquor/alcohol purchased on or off Tribal Lands is prohibited. Any person who is not licensed pursuant to this ordinance and who

purchases liquor/alcoholic beverages on or off Tribal Lands and sells it on Tribal Lands within Tribal jurisdiction, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subject to penalties as set forth herein.

Nothing in this section shall prohibit a tribal licensee or the Tribe from purchasing liquor from an off reservation source for resale on the Reservation or the delivery to the Tribe for a tribal licensee of liquor purchased from off-reservation sources for resale on the Reservation.

Section 4.00 – Prohibition of Sale of Liquor/Alcohol

.01 Prohibition of the unlicensed sale of liquor/alcohol – No person shall import for sale, manufacture, distribute, or sell any liquor/alcohol beverages within the reservation without first applying for and obtaining a Tribal liquor/alcohol license from the Tribal Council issued in accordance with the provisions of this ordinance. Prior to the Tribal Council issuing such liquor/alcohol license, the applicant must possess a valid California liquor/alcohol license.

.02 Authorize to Sell Liquor/Alcohol – Any person applying for and obtaining a liquor/alcohol license under the provisions of this ordinance shall have the right to engage in only liquor/alcohol transactions expressly authorized by such license and only at those specific places or areas designated in the license.

.03 Types of license – The Tribal Council shall have the authority to issue the following types of liquor licenses within the reservation.

a) “Retail on-sale general license” means a license authorizing the applicant to sell liquor/alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

- b) “Retail on-sale beer and wine license” means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license.
- c) “Retail off-sale general license” means a license authorizing the applicant to sell liquor/alcoholic beverages at retail to be consumed by the buyer off the premises or at a location other than the one designated in the license.
- d) “Retail off-sale beer and wine license” means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off the premises or at a location other than the one designated in the license.
- e) “Manufacture’s license” means a license authorizing the applicant to manufacture liquor/alcoholic beverages for the purpose of sale on the reservation.

Section 5.00 – Age Limit

The drinking age for individuals within the exterior boundaries of the Bishop Paiute Reservation and/or general governmental jurisdiction of the Tribe shall be the same as that of the State of California, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any liquor/alcoholic beverage. At such time, if any, as California Business and Profession Code Section 25658, which sets the drinking age for the State of California, is repealed or amended to raise or lower the drinking age within California, the Tribe shall operate concurrently with the State of California as to legal liquor/alcohol drinking age limits.

.01 Sale or Service of Liquor/Alcohol by licensee’s minor employees

- a) The holder of a license issued under this Ordinance may employ persons 18, 19, and 20 years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food, except in those areas classified by the California Department of Alcoholic Beverage Control as being prohibited to the use of minors. However, no person who is 18, 19 and 20 years shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.
- b) Except as stated in this section, it shall be unlawful to hire any person to work in connection with the sale and service of liquor/alcoholic beverage in a tribally licensed liquor/alcohol establishment if such person is under the age of 21 years.

Section 6.00 – Signs

Licensed premises establishments must post signs that conform to applicable State, Federal and Tribal Laws.

Section 7.00 – Rules and Regulations

.01 Sale of Possession of with the intent of sell without a Liquor/Alcohol License – Any person who sells or offers for sale or distributes or transport(s) in any manner, any liquor in violation of this ordinance, or who possesses liquor/alcohol with intent to sell or distribute without a Tribal liquor license, shall be guilty of a violation of this ordinance.

.02 Sale(s) to Intoxicated Persons – Any person who knowingly sells liquor/alcohol to any person under the influence of liquor/alcoholic beverage, to the extent that control of the person's faculties is impaired shall be guilty of a violation of this ordinance.

.03 Consuming Liquor/Alcohol in Public Conveyance – Any person engaged wholly or in part in the public conveyance business of carrying passengers for hire and every agent, servant, or employee or such person, who knowingly permits any person to drink any liquor/alcohol in any vehicle that carries passengers for hire, while such vehicle is on Tribal land, shall be guilty of a violation of this ordinance. Any person who drinks any liquor/alcohol in any vehicle that carries passengers for hire, while such vehicle is on Tribal land, shall be guilty of a violation of this ordinance.

.04 Liquor/Alcohol may not be given as a prize, gift, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

Section 8.00 – Enforcement and Jurisdiction

.01 Enforcement – The Tribe through its Tribal Council and Bishop Paiute Tribal Court (Tribal Court) and duly authorized security personnel, shall have the authority to enforce this Ordinance which shall include confiscating any liquor/alcohol manufactured, introduced, sold or possessed located on Tribal Lands in violation of this ordinance. The Tribal Council shall be empowered to sell confiscated liquor/alcohol for the benefit of the Tribe after receiving Tribal Court approval, and to develop and approve such regulations as may become necessary for the enforcement of this Ordinance.

.02 Jurisdiction – Any violations of this ordinance shall constitute a public nuisance under Tribal law. It shall be the Tribal Council or its duly authorized security personnel who may initiate and maintain an action in the Tribal Court to abate and permanently enjoin any nuisance declared under this ordinance and to enforce any and all provisions and penalties under this ordinance. The Tribal Council shall authorize and implement the development of Court rules and procedures that will ensure due process as to all Tribal Court proceedings under this

ordinance. Any actions taken under this section 8 may be in addition to any other penalties provided in this ordinance or adopted by the Tribal Council from time to time. This ordinance when approved by the United States Department of the Interior and published in the Federal register shall fall under the jurisdiction of the Tribal Court.

.03 General penalties – The Tribe through the Tribal Court may implement monetary fines not to exceed \$500 for each violation and/or causing the suspension or revocation of a liquor/alcohol license. The Tribal Court may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. This schedule will include violations for repeat offenders. Any penalties provided herein shall in addition to any criminal penalties, which may be imposed by the Tribal Court through an adopted separate ordinance that conforms to federal law.

.04 Conflicting provisions – Whenever any conflict occurs between the provisions of this ordinance or the provisions of any other ordinance of the Tribe, the stricter of such provisions shall apply.

.05 Severability – If any provision or application of this ordinance is determined invalid such determination shall not invalidate the remaining portions of this ordinance.

Section 9.00 – Limited Waiver of Sovereign Immunity

By enacting this ordinance, the Tribe does not waive, or limit or modify its sovereign immunity from unconsented suit or any other judicial or administrative proceeding except as specifically provided herein.

The Tribe agrees and grants a limited waiver of its sovereign immunity solely for the purpose of authorizing the State of California through or on behalf of the California State

Department of Alcohol Beverage Control or any other appropriate sState agency to bring an action in courts of appropriate jurisdiction with the State of California or California State Administrative Proceedings, for the purpose of providing the State of California with remedies to enforce all laws, rules, regulations and rights the state has relating to the issuance of a liquor/alcohol beverage license to the Tribe.

Section 10.00 – Revocation/Suspension of License

The Tribal Council may revoke or suspend the license for reasonable cause after providing the licensee with notice and an opportunity to participate in a hearing at which time the licensee is given an opportunity to respond to any claims against it alleging a violation of this Ordinance, and to demonstrate why the license should not be revoked or suspended. Any determination of the Tribal Council concerning revocation or suspension of a license is final. The Tribal Council shall direct its authorized representatives to prepare appropriate rules of procedure concerning how a revocation/suspension hearing is to be held and the form of notice to be given to a licensee subject to potential revocation or suspension of its license.

Section 11.00 – Inspection of Licensed Premises

The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Council and or its authorized representative with respect to the enforcement of this Ordinance at all reasonable times for the purpose of ascertaining whether the rules and regulations of the Tribal Council and this Ordinance are being complied with.

[FR Doc. 2013-05499 Filed 03/07/2013 at 8:45 am; Publication Date: 03/08/2013]